

II. REMARKS

Formal Matters

Claims 1, 2, 7-10, and 25-27 are pending after entry of the amendments set forth herein.

Claims 1, 2, 7-10, and 25-27 were examined. Claims 7-10 were rejected. Claims 1, 2, 25, and 26 were allowed. Claim 27 was objected to.

Claims 7 and 27 are amended. The amendments to claims 7 and 27 were made solely in the interest of expediting prosecution, and are not to be construed as an acquiescence to any objection or rejection of any claim. The amendment to claim 27 is merely editorial in nature. Accordingly, no new matter is added by the amendment to claim 27. Support for the amendments to claim 7 is found in the claims as originally filed, and throughout the specification, in particular at the following exemplary location: page 14, lines 21-28. Accordingly, no new matter is added by these amendments.

Applicants respectfully request reconsideration of the application in view of the remarks made herein.

Claim objection

Claim 27 was objected to. The Office Action suggested that the phrase “at least about 98% amino acid identity” as recited in claim 27 be amended to “at least about 98% amino acid sequence identity.”

Claim 27 is amended as suggested in the Office Action, thereby adequately addressing this objection.

Rejection under 35 U.S.C. §112, first paragraph

Claims 7-10 were rejected under 35 U.S.C. §112, first paragraph, as allegedly lacking enablement.

The Office Action stated that “applicants have not provided sufficient guidance to enable one of ordinary skill in the art to make and use the claimed invention in a manner reasonably correlated with the scope of the claims broadly including any polynucleotide ‘comprising ... a polynucleotide having a nucleotide sequence found in the polynucleotide according to claim 1...’”. Office Action, page 5.

Without conceding to the correctness of this rejection, and solely in the interest of expediting prosecution, claim 7 is amended to recite: "An expression cassette comprising a transcriptional initiation region functional in an expression host, a polynucleotide according to claim 1 under the transcriptional regulation of said transcriptional initiation region, and a transcriptional termination region functional in said expression host."

Applicants submit that the rejection of claims 7-10 under 35 U.S.C. §112, first paragraph, has been adequately addressed in view of the remarks set forth above. The Examiner is thus respectfully requested to withdraw the rejection.

Rejection under 35 U.S.C. §102(a)

Claims 7-10 were rejected under 35 U.S.C. §102(a) as allegedly anticipated by Baker et al. (WO 00/12708; "Baker").

The Office Action stated: "It is acknowledged that the polynucleotide of claim 1 has been removed from this rejection, and while the expression cassette of claim 7 does depend from claim 1, it is worded such that it does not require all of the limitations of claim 1, thus it remains anticipated by Baker.

Without conceding to the correctness of this rejection, and solely in the interest of expediting prosecution, claim 7 is amended to recite: "An expression cassette comprising a transcriptional initiation region functional in an expression host, a polynucleotide according to claim 1 under the transcriptional regulation of said transcriptional initiation region, and a transcriptional termination region functional in said expression host."

Applicants submit that the rejection of claims 7-10 under 35 U.S.C. §102(a) has been adequately addressed in view of the remarks set forth above. The Examiner is thus respectfully requested to withdraw the rejection.

III. CONCLUSION

Applicants submit that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-0815, order number UCAL-240 CIP.

Respectfully submitted,
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